

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 167 of 2015****Judgment reserved on 06.08.2018****Judgment delivered on 06.09.2018**

- Pardeshi Ram Dhanuwar Son of late Itwar Singh Dhanuwar, aged about 25 years, R/o Village Jurali, Gadelpara, Police Station- Katghora, District- Korba (Chhattisgarh).

---- Appellant

Versus

- The State Chhattisgarh, Through: Police Station Katghora, District- Korba (Chhattisgarh).

---- Respondent

For Appellant : Shri Manoj Kumar Jaiswal, Advocate

For Respondent/State : Shri Adil Minhaj, Panel Lawyer

Hon'ble Shri justice Pritinker Diwaker &**Hon'ble Shri Justice Gautam Chourdiya****C.A.V. Judgment****Per Hon'ble Shri Gautam Chourdiya J.**

1 This appeal arises out of the judgment of conviction and order of sentence dated 31.10.2014 passed by the Additional Sessions Judge, Katghora in S. T. No. 41/2014, convicting the accused/appellant under Sections 302 of Indian Penal Code and sentencing him to undergo imprisonment for life and to pay fine of Rs. 1,000/-, in default of payment of fine to undergo additional R.I for one year and under Section 201 of Indian Penal Code and sentencing him to undergo

Rigorous Imprisonment for 3 years and to pay fine of Rs. 500/- in default of payment of fine to further undergo 6 months Rigorous imprisonment.

2. Facts of the case in brief are that on 02.12.2013 FIR (Ex. P/2) was lodged by Puran Singh Kavar (PW-1) Sarpanch of the village regarding the death of deceased- Matibai, wife of the appellant. On the basis of which, offence under Section 302 of IPC was registered against the unknown person under Crime No. 76/2013 regarding the unnatural death of deceased. Inquest report (Ex.P/9) was prepared in presence of the appellant, Sarpanch of the village and other villagers. During investigation, under Section 27 of the Evidence Act vide Ex. P/3 memorandum of accused/appellant was recorded on 03.12.2013. As per memorandum of the accused/appellant (Ex.P/3), from the place of occurrence i.e. Amakhora near canal, one red sari, one stone, one club and one blouse were seized. As per property seizure memo (Ex.P/4) blood stained blouse, jeans and shirt were found. Spot map vide (Ex.P/7) was prepared by Investigating Officer Gopal Vyas (PW-6).

3. During investigation, it was found that on the date of incident i.e. 01.12.2013, at about 4.00 p.m. in the evening appellant- Pardeshi Ram Dhanuwar alongwith his wife- Matibai and their child, aged about 3 years and one Bodhram had gone to Katghora for purchasing household items from weekly market, before going to market the appellant consumed liquor at his house. In the market, he met Narayan Singh and Mangal and there they all consumed liquor at that time and, thereafter, some quarrel took place between the appellant and deceased- Matibai, as a result of which, appellant assaulted her. During quarrel, Narayan advised both of them not to fight with each other and left their company near the Vishwkarma Factory. On the next day, Naryan Dhanwar came to know that accused/appellant has beaten his wife by club and killed her. Next day of the incident, Chandrambai mother-in-law of the deceased informed about the

incident to Puran Singh (PW-1) - Sarpanch of village Rampur that dead body of her daughter-in-law was found near the Amakhor canal and, thereafter Sarpanch Puran Singh (PW-1) and other villagers went to the place of incident and found accused/appellant alongwith his 3 years child near the place of occurrence in a sleeping condition and dead-body of deceased was found under the mahua tree, then the villager woke up the accused/appellant and asked him as to who had beaten his wife, he explained that after marketing at katghora Bazar, his wife staying in market for purchasing some household articles, and accused/appellant was waiting for his wife but when she did not return till 7.00 p.m. from the market then he searched for his wife and he stayed for rest near Amakhore canal where he found his wife in an injured condition, the blood was oozing from her mouth and she was breathing slowly, and thereafter she died. He also states that some unknown person with the help of stick murdered his wife. On the basis of information given by accused/appellant, Sarpanch Puran Singh (PW-1) lodged the FIR vide Ex.P/2. After completion of investigation, charge sheet was filed against the appellant under Sections 302 & 201 of Indian Penal Code. However, while framing charge the trial Court framed charge against the accused/appellant under Sections 302 & 201 of IPC.

4. So as to hold the accused/appellant guilty, the prosecution examined 8 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No defence witness has been examined.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.

6. Learned counsel for the appellant submits that there is no eyewitness account to the incident and the prosecution case is based on only weak type of circumstantial evidence. The wife of the appellant deceased- Matibai had taken liquor and thereafter left the company of the appellant and stayed in the market at Katghora for purchasing some household items. There was no quarrel between the appellant and the deceased in the market and no witness states about the appellant being last seen with the deceased and there is no proper connection of the evidence adduced in the case with the crime in question for holding the accused/appellant guilty of offence. Only on the basis of last seen circumstance, accused cannot be convicted for the aforesaid offences. He further submits that the judgment of the learned trial Court is based on mis-appreciation of evidence and none of the witnesses have supported the prosecution case.

7. The judgment of trial Court is bad in law and in view of the facts and circumstances of the case and the evidence available on record, this Court may allow the appeal and set-aside the judgment passed by the trial Court.

8. Opposing the submission of counsel for the appellant, it has been vehemently argued by learned counsel for the State that on the date of incident deceased- Matibai, wife of the appellant was accompanied by the accused/appellant in the Katghora market and there both of them with two other persons namely Narayan and Mangal consumed liquor, thereafter the dead-body was found near

Amakhor canal and accused was found sleeping near the dead body with his child. If even at 7.00 p.m. some unknown person had killed his wife, it was his duty to inform the villagers and Police but till next day morning he did not inform them and after getting the dead-body of the deceased by his mother, she intimated to villagers about the incident.

9. The appellant/accused also gave a false explanation that unknown person has murdered his wife. Learned State counsel further submits that the death of deceased was caused due to multiple injuries on her body. Medical report itself shows that death is caused due to major shock and head injury, and there is no explanation given by the accused/appellant regarding the death of his wife whereas appellant is the person, who had last accompanied the deceased. Therefore, the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in light of the legal provisions and as such there is no illegality or infirmity in it warranting interference by this Court.

10. We have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

11. Manharan Diwan, Secretary of Grampanchayat, informed on telephone to Puran Singh (PW-1) about the murder of Matibai and he lodged merged intimation vide Ex.P/1 and FIR (Ex.P/2) regarding the murder of deceased. Inquest report vide Ex. P/9 was prepared in

presence of Malik Das (PW-3) Kotwar of the village. Sushil Kumar Gupta (PW-4) also proved this fact that when he heard that a woman was murdered, alongwith Sarpanch and other villagers he reached the place of incident where he found a dead-body of woman lying. Dr. D. K. Chauhan (PW-5) did the postmortem vide Ex. P/13 and he opined that the death of Matibai was homicidal in nature. 20 injuries were found on the body of the deceased and cause of death was excessive bleeding from her mouth and the injuries caused on the head, as per evidence collected and adduced by the prosecution

12. Prosecution case is based on circumstantial evidence. Circumstances are as below:

- i. Accused/appellant was with his wife the last time seen at Katghora market.
- ii. Deceased died due to multiple injuries caused on her body.
- iii. Accused was found with the dead body at the spot near Amakhor canal. Before the incident accused and his wife consumed liquor and quarrel was took place between them in the Katghora Market.
- iv. Accused gave false explanation regarding the death of his wife.

13. Bodhram(PW-2), Narayan Singh (PW-7) both were present in the village market on the date of incident and met the appellant and his wife and all of them consumed liquor at Katghora Bazar, thereafter

when the appellant and the deceased were fighting with each other Narayan Singh (PW-7) advised and suggest the accused not to beat his wife, the accused/appellant and deceased alongwith Narayan Singh walked together a long distance up to Viswkarma Factory, thereafter, Narayan Singh (PW-7) left the company of appellant and deceased. Bodhram (PW-2) has also stated in paragraph No. 2 of his statement that in the Katghora market accused and deceased had taken liquor and after taking liquor appellant abused his wife and beat his wife by club. Bodhram (PW-2) is declared hostile by the prosecution but to the some extent regarding consuming liquor in the market by appellant and deceased and quarrel between them and both of them being seen together, is not disputed and supported by him. Next day morning he heard that the wife of appellant was murdered. He also stated in para 6 of his statement that accused had murder his wife and narrated a false story to the village people.

14. The dead body was found near Amakhor canal is mentioned by Puran Singh (PW-1). The dead-body was lying on the farm and 6 meters from the dead-body the accused was lying. After seeing this Puran Singh (PW-1) immediately asked the accused/appellant about the death of his wife and in answer he explained that three persons kidnapped his wife and went towards the Amakhor forest, when appellant reached to his wife, those three boys were fleeing away but that explanation given by him appears to be false. If in evening when the appellant left Katghora market with his wife and child with Narayan

Singh (PW-7) and on way to their home they walked together a long distance, the explanation given by the accuse/appellant that his wife stayed in the market for purchasing some article, is absolutely wrong. Narayan Singh (PW-7) specifically and categorically stated that after consuming liquor accused quarreled with his wife, then he advised him not to do so and thereafter they all moved to their home and after going a long distance near Vishwakarma Factory, he left their company.

15. The conduct of the appellant appears to be highly unnatural that in the evening at about 6-7 p.m. when he reached the Amakhor canal, the dead-body of his wife was lying, he slept near the body comfortably and no attempt was made by him to inform the Police or the villagers regarding the death of his wife and the story narrated to Sarpanch Puran Singh that three boys kidnapped his wife also appears to be fake because why for the whole night he never informed anybody about the kidnapping of his wife and even on the next day of incident till 4.30 p.m. he never informed about this incident to anyone. Prosecution witnesses namely Bodhram and Narayan Singh both have stated that the appellant was the person, who last accompanied his wife.

16. Sushil Kumar Gupta (PW-4) has also stated that when he received information that one woman was murdered near Amakhor Canal, he alongwith Puran Singh (PW-1)- Sarpanch of the village reached the place of incident where he found the dead-body of

deceased lying in the field and near the dead-body the accused/appellant was sleeping. They woke up the accused/appellant and he identified the dead-body to be of his wife and thereafter Puran Singh (PW-1) informed about the incident to the police Officer.

17. Considering the overall evidence available on record oral and documentary, complicity of the accused/appellant in crime in question stands proved beyond all reasonable doubt. Being so, the findings recorded by the trial Court holding the appellant guilty under Sections 302 and 201 of Indian Penal Code cannot be faulted with and the same are hereby affirmed.

18. Resultantly, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

19. As it is reported that appellant/accused- Pardeshi Ram Dhanuvar is already in jail, no further order regarding his arrest, surrender etc. is required.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Gautam Chourdiya)
Judge